

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. PCB IBS 17-01 (2017)

Amendment No.

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED \_\_\_\_\_ (Y/N)  
ADOPTED AS AMENDED \_\_\_\_\_ (Y/N)  
ADOPTED W/O OBJECTION \_\_\_\_\_ (Y/N)  
FAILED TO ADOPT \_\_\_\_\_ (Y/N)  
WITHDRAWN \_\_\_\_\_ (Y/N)  
OTHER \_\_\_\_\_

---

1 Committee/Subcommittee hearing bill: Insurance & Banking  
2 Subcommittee

3 Representative Fant offered the following:

4  
5 **Amendment (with title amendment)**

6 Remove everything after the enacting clause and insert:

7 Section 1. Section 440.015, Florida Statutes, is amended  
8 to read:

9 440.015 Legislative findings and intent.-

10 (1) The Legislature finds that the workers' compensation  
11 system should be self-executing and serve a critical function in  
12 balancing the rights of injured employees and their employers.  
13 This system acts to ensure the quick and efficient delivery of  
14 disability and medical benefits, including a portion of lost  
15 wages, to injured employees and to facilitate injured employees'  
16 return to employment at a reasonable cost to employers. In

PCB IBS 17-01 Strike1

Published On: 3/14/2017 11:51:40 AM

Amendment No.

17 | consideration of this mutual renunciation of rights, the  
18 | workers' compensation system offers an exclusive remedy to  
19 | injured workers and employers.

20 |       (2) It is the intent of the Legislature that the Workers'  
21 | Compensation Law be interpreted so as to ensure ~~assure~~ the quick  
22 | and efficient delivery of disability and medical benefits to an  
23 | injured worker and to facilitate the worker's return to gainful  
24 | reemployment at a reasonable cost to the employer. It is the  
25 | specific intent of the Legislature that workers' compensation  
26 | cases shall be decided on their merits. The workers'  
27 | compensation system in Florida is based on a mutual renunciation  
28 | of common-law rights and defenses by employers and employees  
29 | alike. In addition, it is the intent of the Legislature that the  
30 | facts in a workers' compensation case are not to be interpreted  
31 | liberally in favor of either the rights of the injured worker or  
32 | the rights of the employer. Additionally, the Legislature hereby  
33 | declares that disputes concerning the facts in workers'  
34 | compensation cases are not to be given a broad liberal  
35 | construction in favor of the employee on the one hand or of the  
36 | employer on the other hand, and the laws pertaining to workers'  
37 | compensation are to be construed in accordance with the basic  
38 | principles of statutory construction and not liberally in favor  
39 | of either employee or employer. It is the intent of the  
40 | Legislature to ensure the prompt delivery of benefits to the  
41 | injured worker. Therefore, an efficient and self-executing

PCB IBS 17-01 Strike1

Published On: 3/14/2017 11:51:40 AM

Amendment No.

42 system must be created which is not an economic or  
43 administrative burden. The department, agency, the Office of  
44 Insurance Regulation, and the Division of Administrative  
45 Hearings shall administer the Workers' Compensation Law in a  
46 manner which facilitates the self-execution of the system and  
47 the process of ensuring a prompt and cost-effective delivery of  
48 payments.

49 Section 2. Subsection (40) of section 440.02, Florida  
50 Statutes, is amended to read:

51 440.02 Definitions.—When used in this chapter, unless the  
52 context clearly requires otherwise, the following terms shall  
53 have the following meanings:

54 (40) "Specificity" means information on the petition for  
55 benefits sufficient to put the employer or carrier on notice of  
56 the exact statutory classification and outstanding time period  
57 for each requested benefit, the specific amount of each  
58 requested benefit, the calculation used for computing the  
59 requested benefit, ~~of benefits being requested and includes a~~  
60 detailed explanation of any benefits received that should be  
61 increased, decreased, changed, or otherwise modified. If the  
62 petition is for medical benefits, the information shall include  
63 specific details as to why such benefits are being requested,  
64 why such benefits are medically necessary, and why current  
65 treatment, if any, is not sufficient. Any petition requesting  
66 alternate or other medical care, including, but not limited to,

PCB IBS 17-01 Strike1

Published On: 3/14/2017 11:51:40 AM

Amendment No.

67 petitions requesting psychiatric or psychological treatment,  
68 must specifically identify the physician, as defined in s.  
69 440.13(1), who is recommending such treatment. A copy of a  
70 report from such physician making the recommendation for  
71 alternate or other medical care shall also be attached to the  
72 petition. A judge of compensation claims shall not order such  
73 treatment if a physician is not recommending such treatment.

74 Section 3. Subsection (3) of section 440.093, Florida  
75 Statutes, is amended to read:

76 440.093 Mental and nervous injuries.—

77 (3) Subject to the payment of permanent benefits under s.  
78 440.15, in no event shall temporary benefits for a compensable  
79 mental or nervous injury be paid for more than 6 months after  
80 the date of maximum medical improvement for the injured  
81 employee's physical injury or injuries, which shall be included  
82 in the period of ~~104 weeks~~ as provided in s. 440.15(2) and (4).  
83 Mental or nervous injuries are compensable only in accordance  
84 with the terms of this section.

85 Section 4. Paragraph (c) of subsection (3) of section  
86 440.105, Florida Statutes, is amended to read:

87 440.105 Prohibited activities; reports; penalties;  
88 limitations.—

89 (3) Whoever violates any provision of this subsection  
90 commits a misdemeanor of the first degree, punishable as  
91 provided in s. 775.082 or s. 775.083.

PCB IBS 17-01 Strike1

Published On: 3/14/2017 11:51:40 AM

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. PCB IBS 17-01 (2017)

Amendment No.

92       ~~(c) It is unlawful for any attorney or other person, in~~  
93 ~~his or her individual capacity or in his or her capacity as a~~  
94 ~~public or private employee, or for any firm, corporation,~~  
95 ~~partnership, or association to receive any fee or other~~  
96 ~~consideration or any gratuity from a person on account of~~  
97 ~~services rendered for a person in connection with any~~  
98 ~~proceedings arising under this chapter, unless such fee,~~  
99 ~~consideration, or gratuity is approved by a judge of~~  
100 ~~compensation claims or by the Deputy Chief Judge of Compensation~~  
101 ~~Claims.~~

102       Section 5. Paragraph (f) of subsection (2) of section  
103 440.13, Florida Statutes, is amended to read:

104       440.13 Medical services and supplies; penalty for  
105 violations; limitations.—

106       (2) MEDICAL TREATMENT; DUTY OF EMPLOYER TO FURNISH.—

107       (f) Upon the written request of the employee, the carrier  
108 shall give the employee the opportunity for one change of  
109 physician during the course of treatment for any one accident.  
110 Upon the granting of a change of physician, the originally  
111 authorized physician in the same specialty as the changed  
112 physician shall become deauthorized upon written notification by  
113 the employer or carrier. The carrier shall authorize an  
114 alternative physician who shall not be professionally affiliated  
115 with the previous physician within 5 days, excluding Saturdays,  
116 Sundays, and legal holidays, after receipt of the request. If

PCB IBS 17-01 Strike1

Published On: 3/14/2017 11:51:40 AM

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. PCB IBS 17-01 (2017)

Amendment No.

117 the carrier fails to provide a change of physician as requested  
118 by the employee, the employee may select the physician and such  
119 physician shall be considered authorized if the treatment being  
120 provided is compensable and medically necessary.

121  
122 Failure of the carrier to timely comply with this subsection  
123 shall be a violation of this chapter and the carrier shall be  
124 subject to penalties as provided for in s. 440.525.

125 Section 6. Paragraph (a) of subsection (2) and paragraphs  
126 (a) and (e) of subsection (4) of section 440.15, Florida  
127 Statutes, are amended, and subsection (13) is added to that  
128 section, to read:

129 440.15 Compensation for disability.—Compensation for  
130 disability shall be paid to the employee, subject to the limits  
131 provided in s. 440.12(2), as follows:

132 (2) TEMPORARY TOTAL DISABILITY.—

133 (a) Subject to subsections (7) and (13) ~~subsection (7)~~, in  
134 case of disability total in character but temporary in quality,  
135 66 2/3 or 66.67 percent of the average weekly wages shall be  
136 paid to the employee during the continuance thereof, ~~not to~~  
137 ~~exceed 104 weeks~~ except as provided in this subsection, s.  
138 440.12(1), and s. 440.14(3). Once the employee reaches the  
139 maximum number of weeks allowed, or the employee reaches the  
140 date of maximum medical improvement, whichever occurs earlier,

PCB IBS 17-01 Strike1

Published On: 3/14/2017 11:51:40 AM

Amendment No.

141 temporary disability benefits shall cease and the injured  
142 worker's permanent impairment shall be determined.

143 (4) TEMPORARY PARTIAL DISABILITY.—

144 (a) Subject to subsections (7) and (13) ~~subsection (7)~~, in  
145 case of temporary partial disability, compensation shall be  
146 equal to 80 percent of the difference between 80 percent of the  
147 employee's average weekly wage and the salary, wages, and other  
148 remuneration the employee is able to earn postinjury, as  
149 compared weekly; however, weekly temporary partial disability  
150 benefits may not exceed an amount equal to 66 2/3 or 66.67  
151 percent of the employee's average weekly wage at the time of  
152 accident. In order to simplify the comparison of the preinjury  
153 average weekly wage with the salary, wages, and other  
154 remuneration the employee is able to earn postinjury, the  
155 department may by rule provide for payment of the initial  
156 installment of temporary partial disability benefits to be paid  
157 as a partial week so that payment for remaining weeks of  
158 temporary partial disability can coincide as closely as possible  
159 with the postinjury employer's work week. The amount determined  
160 to be the salary, wages, and other remuneration the employee is  
161 able to earn shall in no case be less than the sum actually  
162 being earned by the employee, including earnings from sheltered  
163 employment. Benefits shall be payable under this subsection only  
164 if overall maximum medical improvement has not been reached and  
165 the medical conditions resulting from the accident create

PCB IBS 17-01 Strike1

Published On: 3/14/2017 11:51:40 AM

Amendment No.

166 restrictions on the injured employee's ability to return to  
167 work.

168 (e) Such benefits shall be paid during the continuance of  
169 such disability, ~~not to exceed a period of 104 weeks, as~~  
170 ~~provided by this subsection and subsection (2)~~. Once the injured  
171 employee reaches the maximum number of weeks, temporary  
172 disability benefits cease and the injured worker's permanent  
173 impairment must be determined. If the employee is terminated  
174 from postinjury employment based on the employee's misconduct,  
175 temporary partial disability benefits are not payable as  
176 provided for in this section. The department shall by rule  
177 specify forms and procedures governing the method and time for  
178 payment of temporary disability benefits for dates of accidents  
179 before January 1, 1994, and for dates of accidents on or after  
180 January 1, 1994.

181 (13) The total number of weeks of benefits received by an  
182 employee for temporary total disability payable pursuant to  
183 subsection (2), temporary partial disability payable pursuant to  
184 subsection (4), and temporary total disability payable pursuant  
185 to s. 440.491, may not exceed 260 weeks.

186 Section 7. Subsections (8) and (9) of section 440.192,  
187 Florida Statutes, are renumbered as subsections (7) and (8),  
188 respectively, and subsections (2), (4), and (5), and present  
189 subsection (7) of that section are amended to read:

190 440.192 Procedure for resolving benefit disputes.—

PCB IBS 17-01 Strike1

Published On: 3/14/2017 11:51:40 AM

Amendment No.

191 (2) Upon receipt, the Office of the Judges of Compensation  
192 Claims shall review each petition and shall dismiss each  
193 petition or any portion of such a petition that does not on its  
194 face meet the requirements of this section and the definition of  
195 specificity in s. 440.02 and specifically identify or itemize  
196 the following:

197 (a) The name, address, and telephone number,~~and social~~  
198 ~~security number~~ of the employee.

199 (b) The name, address, and telephone number of the  
200 employer.

201 (c) A detailed description of the injury and cause of the  
202 injury, including the county or, if outside this state, the  
203 state location of the occurrence and the date or dates of the  
204 accident.

205 (d) A detailed description of the employee's job, work  
206 responsibilities, and work the employee was performing when the  
207 injury occurred.

208 (e) The specific time period for which compensation and  
209 the specific classification of compensation were not timely  
210 provided.

211 (f) The specific date of maximum medical improvement,  
212 character of disability, and specific statement of all benefits  
213 or compensation that the employee is seeking. A claim for  
214 permanent benefits must include the specific date of maximum

PCB IBS 17-01 Strike1

Published On: 3/14/2017 11:51:40 AM

Amendment No.

215 medical improvement and the specific date that such permanent  
216 benefits are claimed to begin.

217 (g) All specific travel costs to which the employee  
218 believes she or he is entitled, including dates of travel and  
219 purpose of travel, means of transportation, and mileage and  
220 including the date the request for mileage was filed with the  
221 carrier and a copy of the request filed with the carrier.

222 (h) Specific listing of all medical charges alleged  
223 unpaid, including the name and address of the medical provider,  
224 the amounts due, and the specific dates of treatment.

225 (i) The type or nature of treatment care or attendance  
226 sought and the justification for such treatment. If the employee  
227 is under the care of a physician for an injury identified under  
228 paragraph (c), a copy of the physician's request, authorization,  
229 or recommendation for treatment, care, or attendance must  
230 accompany the petition.

231 (j) If the average weekly wage calculated by the employer  
232 or carrier is disputed, the specific amount of compensation  
233 claimed to be accurate and the methodology claimed to accurately  
234 calculate the average weekly wage. If the petition does not  
235 include a claim under this paragraph, the average weekly wage  
236 and corresponding compensation calculated by the employer or  
237 carrier are presumed to be accurate.

238 ~~(k)-(j)~~ Specific explanation of any other disputed issue  
239 that a judge of compensation claims will be called to rule upon.

PCB IBS 17-01 Strike1

Published On: 3/14/2017 11:51:40 AM

Amendment No.

240  
241 ~~The~~ Dismissal of any petition or portion of such a petition  
242 under this subsection ~~section~~ is without prejudice and does not  
243 require a hearing.

244 (4) Before filing a ~~The~~ petition, ~~must include a~~  
245 ~~certification by~~ the claimant or, if the claimant is represented  
246 by counsel, the claimant's attorney, must make ~~stating that the~~  
247 ~~claimant, or attorney if the claimant is represented by counsel,~~  
248 ~~has made~~ a good faith effort to resolve the dispute. A petition  
249 for benefits must include a certification by the claimant or the  
250 claimant's attorney and that the claimant or attorney made such  
251 a good faith effort but is ~~was~~ unable to resolve the dispute  
252 with the carrier or employer, if self-insured. Upon determining  
253 that the claimant or the claimant's attorney has not made such a  
254 good faith effort to resolve the dispute, the judge of  
255 compensation claims shall dismiss the petition and may impose  
256 sanctions to ensure compliance with this subsection.  
257 Certification by the division that the claimant or the  
258 claimant's attorney made a good faith effort to resolve the  
259 dispute is prima facie evidence of compliance with this  
260 subsection.

261 (5) (a) All motions to dismiss must state with  
262 particularity the basis for the motion. The judge of  
263 compensation claims shall enter an order upon such motions  
264 without hearing, unless good cause for hearing is shown.

PCB IBS 17-01 Strike1

Published On: 3/14/2017 11:51:40 AM

Amendment No.

265 Dismissal of any petition or portion of a petition under this  
266 subsection is without prejudice.

267 (b) Upon motion that a petition or portion of a petition  
268 be dismissed for lack of specificity, the judge of compensation  
269 claims shall enter an order on the motion, unless stipulated in  
270 writing by the parties, within 10 days after the motion is filed  
271 or, if good cause for hearing is shown, within 20 days after  
272 hearing on the motion. When any petition or portion of a  
273 petition is dismissed for lack of specificity under this  
274 subsection, the claimant must be allowed 10 ~~20~~ days after the  
275 date of the order of dismissal in which to file an amended  
276 petition. Any grounds for dismissal for lack of specificity  
277 under this section which are not asserted within 30 days after  
278 receipt of the petition for benefits are ~~thereby~~ waived.

279 ~~(7) Notwithstanding the provisions of s. 440.34, a judge~~  
280 ~~of compensation claims may not award attorney's fees payable by~~  
281 ~~the carrier for services expended or costs incurred prior to the~~  
282 ~~filing of a petition that does not meet the requirements of this~~  
283 ~~section.~~

284 Section 8. Subsection (4) of section 440.20, Florida  
285 Statutes, is amended to read:

286 440.20 Time for payment of compensation and medical bills;  
287 penalties for late payment.-

288 (4) If the carrier is uncertain of its obligation to  
289 provide all benefits or compensation, the carrier shall

PCB IBS 17-01 Strike1

Published On: 3/14/2017 11:51:40 AM

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. PCB IBS 17-01 (2017)

Amendment No.

290 immediately and in good faith commence investigation of the  
291 employee's entitlement to benefits under this chapter and shall  
292 admit or deny compensability within 120 days after the initial  
293 provision of compensation or benefits as required under  
294 subsection (2) or s. 440.192(7) ~~440.192(8)~~. Additionally, the  
295 carrier shall initiate payment and continue the provision of all  
296 benefits and compensation as if the claim had been accepted as  
297 compensable, without prejudice and without admitting liability.  
298 Upon commencement of payment as required under subsection (2) or  
299 s. 440.192(7) ~~440.192(8)~~, the carrier shall provide written  
300 notice to the employee that it has elected to pay the claim  
301 pending further investigation, and that it will advise the  
302 employee of claim acceptance or denial within 120 days. A  
303 carrier that fails to deny compensability within 120 days after  
304 the initial provision of benefits or payment of compensation as  
305 required under subsection (2) or s. 440.192(7) ~~440.192(8)~~ waives  
306 the right to deny compensability, unless the carrier can  
307 establish material facts relevant to the issue of compensability  
308 that it could not have discovered through reasonable  
309 investigation within the 120-day period. The initial provision  
310 of compensation or benefits, for purposes of this subsection,  
311 means the first installment of compensation or benefits to be  
312 paid by the carrier under subsection (2) or pursuant to a  
313 petition for benefits under s. 440.192(7) ~~440.192(8)~~.

PCB IBS 17-01 Strike1

Published On: 3/14/2017 11:51:40 AM

Amendment No.

314 Section 9. Section 440.34, Florida Statutes, is amended to  
315 read:

316 440.34 Attorney ~~Attorney's~~ fees; costs.-

317 ~~(1)~~ A claimant is responsible for payment of her or his  
318 own attorney fees fee, gratuity, or other consideration may not  
319 be paid for a claimant in connection with any proceedings  
320 arising under this chapter, and a judge of compensation claims  
321 may not award attorney fees payable by the carrier or employer.  
322 Any retainer agreement between a claimant and her or his  
323 attorney must be unless approved by the judge of compensation  
324 claims or court having jurisdiction over such proceedings as  
325 consistent with rules regulating The Florida Bar, and attorney  
326 fees payable by the claimant must be approved by the judge of  
327 compensation claims to ensure compliance with the retainer  
328 agreement. A claimant's own attorney fees are a lien upon  
329 compensation payable to the claimant, notwithstanding s. 440.22.  
330 ~~Any attorney's fee approved by a judge of compensation claims~~  
331 ~~for benefits secured on behalf of a claimant must equal to 20~~  
332 ~~percent of the first \$5,000 of the amount of the benefits~~  
333 ~~secured, 15 percent of the next \$5,000 of the amount of the~~  
334 ~~benefits secured, 10 percent of the remaining amount of the~~  
335 ~~benefits secured to be provided during the first 10 years after~~  
336 ~~the date the claim is filed, and 5 percent of the benefits~~  
337 ~~secured after 10 years. The judge of compensation claims shall~~  
338 ~~not approve a compensation order, a joint stipulation for lump-~~

PCB IBS 17-01 Strike1

Published On: 3/14/2017 11:51:40 AM

Amendment No.

339 ~~sum settlement, a stipulation or agreement between a claimant~~  
340 ~~and his or her attorney, or any other agreement related to~~  
341 ~~benefits under this chapter which provides for an attorney's fee~~  
342 ~~in excess of the amount permitted by this section. The judge of~~  
343 ~~compensation claims is not required to approve any retainer~~  
344 ~~agreement between the claimant and his or her attorney. The~~  
345 ~~retainer agreement as to fees and costs may not be for~~  
346 ~~compensation in excess of the amount allowed under this~~  
347 ~~subsection or subsection (7).~~

348 ~~(2) In awarding a claimant's attorney's fee, the judge of~~  
349 ~~compensation claims shall consider only those benefits secured~~  
350 ~~by the attorney. An attorney is not entitled to attorney's fees~~  
351 ~~for representation in any issue that was ripe, due, and owing~~  
352 ~~and that reasonably could have been addressed, but was not~~  
353 ~~addressed, during the pendency of other issues for the same~~  
354 ~~injury. The amount, statutory basis, and type of benefits~~  
355 ~~obtained through legal representation shall be listed on all~~  
356 ~~attorney's fees awarded by the judge of compensation claims. For~~  
357 ~~purposes of this section, the term "benefits secured" does not~~  
358 ~~include future medical benefits to be provided on any date more~~  
359 ~~than 5 years after the date the claim is filed. In the event an~~  
360 ~~offer to settle an issue pending before a judge of compensation~~  
361 ~~claims, including attorney's fees as provided for in this~~  
362 ~~section, is communicated in writing to the claimant or the~~  
363 ~~claimant's attorney at least 30 days prior to the trial date on~~

PCB IBS 17-01 Strike1

Published On: 3/14/2017 11:51:40 AM

Amendment No.

364 ~~such issue, for purposes of calculating the amount of attorney's~~  
365 ~~fees to be taxed against the employer or carrier, the term~~  
366 ~~"benefits secured" shall be deemed to include only that amount~~  
367 ~~awarded to the claimant above the amount specified in the offer~~  
368 ~~to settle. If multiple issues are pending before the judge of~~  
369 ~~compensation claims, said offer of settlement shall address each~~  
370 ~~issue pending and shall state explicitly whether or not the~~  
371 ~~offer on each issue is severable. The written offer shall also~~  
372 ~~unequivocally state whether or not it includes medical witness~~  
373 ~~fees and expenses and all other costs associated with the claim.~~

374 ~~(3) If any party should prevail in any proceedings before~~  
375 ~~a judge of compensation claims or court, there shall be taxed~~  
376 ~~against the nonprevailing party the reasonable costs of such~~  
377 ~~proceedings, not to include attorney's fees. A claimant is~~  
378 ~~responsible for the payment of her or his own attorney's fees,~~  
379 ~~except that a claimant is entitled to recover an attorney's fee~~  
380 ~~in an amount equal to the amount provided for in subsection (1)~~  
381 ~~or subsection (7) from a carrier or employer:~~

382 ~~(a) Against whom she or he successfully asserts a petition~~  
383 ~~for medical benefits only, if the claimant has not filed or is~~  
384 ~~not entitled to file at such time a claim for disability,~~  
385 ~~permanent impairment, wage-loss, or death benefits, arising out~~  
386 ~~of the same accident;~~

387 ~~(b) In any case in which the employer or carrier files a~~  
388 ~~response to petition denying benefits with the Office of the~~

PCB IBS 17-01 Strike1

Published On: 3/14/2017 11:51:40 AM

Amendment No.

389 ~~Judges of Compensation Claims and the injured person has~~  
390 ~~employed an attorney in the successful prosecution of the~~  
391 ~~petition;~~

392 ~~(c) In a proceeding in which a carrier or employer denies~~  
393 ~~that an accident occurred for which compensation benefits are~~  
394 ~~payable, and the claimant prevails on the issue of~~  
395 ~~compensability; or~~

396 ~~(d) In cases where the claimant successfully prevails in~~  
397 ~~proceedings filed under s. 440.24 or s. 440.28.~~

398  
399 ~~Regardless of the date benefits were initially requested,~~  
400 ~~attorney's fees shall not attach under this subsection until 30~~  
401 ~~days after the date the carrier or employer, if self-insured,~~  
402 ~~receives the petition.~~

403 ~~(4) In such cases in which the claimant is responsible for~~  
404 ~~the payment of her or his own attorney's fees, such fees are a~~  
405 ~~lien upon compensation payable to the claimant, notwithstanding~~  
406 ~~s. 440.22.~~

407 ~~(5) If any proceedings are had for review of any claim,~~  
408 ~~award, or compensation order before any court, the court may~~  
409 ~~award the injured employee or dependent an attorney's fee to be~~  
410 ~~paid by the employer or carrier, in its discretion, which shall~~  
411 ~~be paid as the court may direct.~~

412 ~~(6) A judge of compensation claims may not enter an order~~  
413 ~~approving the contents of a retainer agreement that permits~~

PCB IBS 17-01 Strike1

Published On: 3/14/2017 11:51:40 AM

Amendment No.

414 ~~placing any portion of the employee's compensation into an~~  
415 ~~escrow account until benefits have been secured.~~

416 ~~(7) If an attorney's fee is owed under paragraph (3) (a),~~  
417 ~~the judge of compensation claims may approve an alternative~~  
418 ~~attorney's fee not to exceed \$1,500 only once per accident,~~  
419 ~~based on a maximum hourly rate of \$150 per hour, if the judge of~~  
420 ~~compensation claims expressly finds that the attorney's fee~~  
421 ~~amount provided for in subsection (1), based on benefits~~  
422 ~~secured, fails to fairly compensate the attorney for disputed~~  
423 ~~medical-only claims as provided in paragraph (3) (a) and the~~  
424 ~~circumstances of the particular case warrant such action.~~

425 Section 10. Section 440.341, Florida Statutes, is created  
426 to read:

427 440.341 Costs.—If any party should prevail in a proceeding  
428 before a judge of compensation claims or court, there shall be  
429 taxed against the nonprevailing party the reasonable costs of  
430 such proceedings, not to include attorney fees.

431 Section 11. Section 440.345, Florida Statutes, is amended  
432 to read:

433 440.345 Reporting of attorney's fees.—

434 (1) A judge of compensation claims must include in the  
435 final order the amount of the claimant's attorney fees. The  
436 claimant must provide the judge of compensation claims with an  
437 itemized schedule of the hours expended, the type of fee

PCB IBS 17-01 Strike1

Published On: 3/14/2017 11:51:40 AM

Amendment No.

438 arrangement entered, and the services rendered by the claimant's  
439 attorney.

440 (2) All fees paid to attorneys for services rendered under  
441 this chapter shall be reported to the Office of the Judges of  
442 Compensation Claims as the Division of Administrative Hearings  
443 requires by rule.

444 Section 12. Paragraph (c) of subsection (2) of section  
445 440.45, Florida Statutes, is amended to read:

446 440.45 Office of the Judges of Compensation Claims.—

447 (2)

448 (c) Each judge of compensation claims shall be appointed  
449 for a term of 4 years, but during the term of office may be  
450 removed by the Governor for cause. Prior to the expiration of a  
451 judge's term of office, the statewide nominating commission  
452 shall review the judge's conduct and determine whether the  
453 judge's performance is satisfactory. Effective July 1, 2002, in  
454 determining whether a judge's performance is satisfactory, the  
455 commission shall consider the extent to which the judge has met  
456 the requirements of this chapter, including, but not limited to,  
457 the requirements of ss. 440.25(1) and (4) (a)-(e), ~~440.34(2)~~, and  
458 440.442. If the judge's performance is deemed satisfactory, the  
459 commission shall report its finding to the Governor no later  
460 than 6 months prior to the expiration of the judge's term of  
461 office. The Governor shall review the commission's report and  
462 may reappoint the judge for an additional 4-year term. If the

PCB IBS 17-01 Strike1

Published On: 3/14/2017 11:51:40 AM

Amendment No.

463 Governor does not reappoint the judge, the Governor shall inform  
464 the commission. The judge shall remain in office until the  
465 Governor has appointed a successor judge in accordance with  
466 paragraphs (a) and (b). If a vacancy occurs during a judge's  
467 unexpired term, the statewide nominating commission does not  
468 find the judge's performance is satisfactory, or the Governor  
469 does not reappoint the judge, the Governor shall appoint a  
470 successor judge for a term of 4 years in accordance with  
471 paragraph (b).

472 Section 13. Paragraph (b) of subsection (6) of section  
473 440.491, Florida Statutes, is amended to read:

474 440.491 Reemployment of injured workers; rehabilitation.-

475 (6) TRAINING AND EDUCATION.-

476 (b) When an employee who has attained maximum medical  
477 improvement is unable to earn at least 80 percent of the  
478 compensation rate and requires training and education to obtain  
479 suitable gainful employment, the employer or carrier shall pay  
480 the employee additional training and education temporary total  
481 compensation benefits while the employee receives such training  
482 and education for a period not to exceed 26 weeks, which period  
483 may be extended for an additional 26 weeks or less, if such  
484 extended period is determined to be necessary and proper by a  
485 judge of compensation claims. The benefits provided under this  
486 paragraph shall not be in addition to benefits ~~the 104 weeks as~~  
487 specified in s. 440.15(2). However, a carrier or employer is not

PCB IBS 17-01 Strike1

Published On: 3/14/2017 11:51:40 AM

Amendment No.

488 precluded from voluntarily paying additional temporary total  
489 disability compensation beyond that period. If an employee  
490 requires temporary residence at or near a facility or an  
491 institution providing training and education which is located  
492 more than 50 miles away from the employee's customary residence,  
493 the reasonable cost of board, lodging, or travel must be borne  
494 by the department from the Workers' Compensation Administration  
495 Trust Fund established by s. 440.50. An employee who refuses to  
496 accept training and education that is recommended by the  
497 vocational evaluator and considered necessary by the department  
498 will forfeit any additional training and education benefits and  
499 any additional payment for lost wages under this chapter. The  
500 carrier shall notify the injured employee of the availability of  
501 training and education benefits as specified in this chapter.  
502 The Department of Financial Services shall include information  
503 regarding the eligibility for training and education benefits in  
504 informational materials specified in ss. 440.207 and 440.40.

505 Section 14. This act shall take effect July 1, 2017.

507 -----  
508 **T I T L E A M E N D M E N T**

509 Remove everything before the enacting clause and insert:

510 An act relating to workers' compensation; amending s.  
511 440.015, F.S.; revising legislative intent; amending  
512 s. 440.02, F.S.; revising the definition of the term

PCB IBS 17-01 Strike1

Published On: 3/14/2017 11:51:40 AM

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. PCB IBS 17-01 (2017)

Amendment No.

513 "specificity"; amending s 440.093, F.S.; conforming to  
514 changes made by the act; amending s. 440.105, F.S.;  
515 removing a provision prohibiting certain individuals  
516 from receiving fees or other consideration for  
517 services related to the Workers' Compensation Law;  
518 amending s. 440.13, F.S.; revising the timeline for a  
519 carrier to authorize an alternative physician upon  
520 request; amending s. 440.15, F.S.; providing time  
521 limits for disability benefits; amending s. 440.192,  
522 F.S.; providing additional requirements for petitions  
523 for benefits; requiring claimants to include a  
524 certification that good faith efforts were made to  
525 resolve the dispute with the carrier before filing a  
526 petition; requiring dismissal of the petition and  
527 permitting imposition of administrative fine for  
528 failure to include such certification; providing  
529 dismissal of a petition or a portion thereof is  
530 without prejudice under conditions; providing a  
531 timeframe in which a judge of compensation claims must  
532 enter an order on a motion to dismiss for lack of  
533 specificity; decreasing the timeframe in which a  
534 claimant may file an amended petition; deleting a  
535 provision related to attorney fees; amending s.  
536 440.20, F.S.; conforming cross-references; amending s.  
537 440.34, F.S.; providing that a claimant is responsible

PCB IBS 17-01 Strike1

Published On: 3/14/2017 11:51:40 AM

Amendment No.

538 for payment of his or her own attorney fees and  
539 prohibiting a judge of compensation claims from  
540 awarding attorney fees; requiring approval of retainer  
541 agreements and attorney fees between a claimant and an  
542 attorney; deleting provisions relating to award of  
543 attorney fees and approval of retainer agreements;  
544 creating s. 440.341, F.S.; providing that costs are  
545 awarded to the prevailing party of a proceeding;  
546 amending s. 440.345, F.S.; requiring final orders to  
547 include the amount of attorney fees awarded; amending  
548 s. 440.45, F.S.; conforming provisions to changes made  
549 by the act; amending s. 440.491, F.S.; conforming to  
550 changes made by the act; providing an effective date.

551  
552 WHEREAS, between 3 and 4 percent of employees in this state  
553 sustain work-related injuries, and the workers' compensation  
554 system satisfactorily resolves 92 percent of workplace injuries  
555 without dispute, and

556 WHEREAS, controlling the costs of workers' compensation  
557 insurance in Florida is and continues to be an overwhelming  
558 public necessity. The issue of attorney fees remains a critical  
559 component to controlling these costs. In 31 of the states,  
560 claimants are required to pay their own attorney fees, and

561 WHEREAS, in *Castellanos v. Next Door Co.*, 192 So. 3d 431  
562 (Fla. 2016), the Florida Supreme Court held that the mandatory

PCB IBS 17-01 Strike1

Published On: 3/14/2017 11:51:40 AM

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. PCB IBS 17-01 (2017)

Amendment No.

563 attorney fee schedule provided in s. 440.34 is unconstitutional  
564 as it creates an irrebuttable presumption that precludes any  
565 consideration of whether the fee award is reasonable to  
566 compensate the claimant's attorney, and

567 WHEREAS, in *Miles v. City of Edgewater Police Dep't*, 190  
568 So. 3d 171 (Fla. 1st DCA 2016), the First District Court of  
569 Appeal held that claimants can contract for and pay their own  
570 attorney fees, and that the criminal penalties provided in s.  
571 440.105(3)(c) are unenforceable against an attorney representing  
572 a claimant seeking to obtain workers' compensation benefits, and

573 WHEREAS, in *Westphal v. City of St. Petersburg*, 194 So. 3d  
574 311 (Fla. 2016), the Florida Supreme Court held that s.  
575 440.15(2)(a), which cuts off disability benefits after 104 weeks  
576 to a worker who has not yet reached maximum medical improvement,  
577 is unconstitutional. The court expressed the concern that this  
578 provision deprives an injured worker of disability benefits for  
579 an indefinite amount of time, thereby creating a system of  
580 redress that no longer functions as a reasonable alternative to  
581 tort litigation. NOW, THEREFORE,

PCB IBS 17-01 Strike1

Published On: 3/14/2017 11:51:40 AM